STATE OF MICHIGAN

COURT OF APPEALS

36TH DISTRICT COURT, Plaintiff/Counter-Defendant-Appellant,	UNPUBLISHED June 24, 2010
v	No. 291643 Wayne Circuit Court
AFSCME LOCAL 3308, Defendant/Counter-Plaintiff-Appellee.	LC No. 08-117123-NZ

Before: METER, P.J., and SERVITTO and BECKERING, JJ.

PER CURIAM.

Plaintiff appeals by delayed leave granted a circuit court order granting defendant's motion for summary disposition of its counter-complaint and directing the parties to arbitrate grievances under a collective bargaining agreement (CBA), which the court determined was still in effect. We affirm.

Summary disposition may be granted under MCR 2.116(C)(10) when "there is no genuine issue of material fact, and the moving party is entitled to judgment . . . as a matter of law." Summary disposition may be granted under MCR 2.116(C)(7) if "[t]he claim is barred because of . . . an agreement to arbitrate . . . ." This Court reviews a trial court's decision on a motion for summary disposition de novo. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). We conclude that the trial court correctly granted defendant's motion for summary disposition because there is no genuine issue of material fact that the parties' CBA was not terminated in accordance with its terms; accordingly, there was an agreement to arbitrate.[1]

Termination of the CBA is governed by article 50 of the agreement, which provides:

> This Agreement shall continue in effect for consecutive yearly periods after June 30, 2006, unless notice is given, in writing, by either of [sic] the Union

[1] We reject plaintiff's unsupported assertion that the trial court's ruling was inadequately explained. The trial court clearly stated that "the contract is still in effect."

> or the Employer, to the other party at least ninety (90) days prior to June 30, 2006, or any anniversary date thereafter, of its desire to modify, amend or terminate this Agreement.
>
> If such notice is given, this Agreement shall be open to modification, amendment or termination, as such notice may indicate on June 30, 2006, or the subsequent anniversary date, as the case may be.

Plaintiff argues that it terminated the CBA in a March 1, 2006 letter to defendant in which it stated:

> This letter is to notify you of the Court's intent to modify, amend or terminate all or parts of the Labor Agreement between Local 3308 of AFSCME. This notice is given as described in Article 50, in writing, at least 90 days prior to June 30, 2006.

The first paragraph of article 50 must be understood in light of the second paragraph that explicitly states the effect of providing notice. "If such notice is given, this Agreement *shall be open* to . . . ." The second paragraph indicates that the 90-day notice is required to preserve the right to modify, amend, or terminate the agreement on June 30, 2006, or a subsequent anniversary date. The 90-day notice of the "desire to modify, amend or terminate" the agreement is not itself effective as a modification, amendment, or termination of the CBA. Rather, the CBA in this case contemplates some additional action. Plaintiff does not point to any further action it took to terminate the agreement. An affidavit from defendant's staff representative states that plaintiff "has never communicated in writing that it has terminated the collective bargaining agreement." Therefore, the March 1, 2006, letter did not terminate the CBA because it only referenced an *intent* to modify, amend, or terminate.

Furthermore, plaintiff's contention that the March 1 letter resulted in termination of the CBA ignores the ambiguity of the language in the letter. The letter referenced plaintiff's intent to "modify, amend or terminate all or parts of the Labor Agreement . . . ." "A notice to terminate must be clear and explicit. . . . A notice of modification is not a notice of termination and does not affect termination of the contract." *Chattanooga Mailers Union Local No 92 v Chattanooga News-Free Press Co*, 524 F2d 1305, 1312 (CA 6, 1975) (internal citations and quotation marks omitted), overruled on other grounds in *Bacashihua v United States Postal Service*, 859 F2d 402, 404 (CA 6, 1988); see also *Office & Professional Employers Int'l Union, Local 42, AFL-CIO v United Automobile, Aerospace & Agricultural Implement Workers of America, Westside Local No 174, UAW*, 524 F2d 1316, 1317 (CA 6, 1975), and *Laborers Pension Trust Fund Detroit and Vicinity v Interior Exterior Specialists Constr Group, Inc*, 479 F Supp 2d 674, 684 (ED Mich, 2007). When a party provides a notice that refers to an intent to both modify and terminate without specifying which one, "the ambiguity of the notice destroys its effectiveness for any purpose . . . ." See *Gen Electric Co v Int'l Union United Automobile, Aircraft & Agricultural Implement Workers of America (UAW-CIO)*, 93 Ohio App 139, 147; 108 NE2d 211 (1952). In *Gen Electric*, a pre-printed notice form stated, "This is a 60-day notice to you that we propose to (modify) (terminate) our collective bargaining contract," with an unfulfilled directive to "(Strike out one)" (quotation marks omitted). *Id*. at 144. The Ohio Court of Appeals explained:

> They could not terminate and modify the same contract at the same time by the same notice. However, it seems, according to the defendants' testimony and contention, they attempted by the notice served upon the plaintiff to do just that, but in attempting to do both, they did neither. [*Id*. at 147.]

In the present case, plaintiff's notice indicated an intent to "modify, amend or terminate all or parts of the Labor Agreement . . . ." The expression of an intent to modify the CBA is just as strong as the expression of an intent to terminate the agreement. Even disregarding the second paragraph of article 50, the notice is too ambiguous to be effective as a notice of intent to terminate the agreement.

Plaintiff contends that defendant acknowledged the expiration of the CBA in an August 10, 2006, letter from defendant's president in which she stated, "AFSCME Local 3308's contract expired on June 30, 2006." However, that expression of belief or opinion is of no legal effect here. "When a contract is unambiguous, it must be enforced according to its terms." *Hamade v Sunoco, Inc (R&M)*, 271 Mich App 145, 166; 721 NW2d 233 (2006). The parties do not claim that the CBA is ambiguous. The agreement must be enforced according to its terms, regardless of the expressed beliefs or understanding of defendant's president in August 2006.

Given our holding that the CBA was in effect, we need not address the additional arguments raised by plaintiff on appeal.

Affirmed.

/s/ Patrick M. Meter
/s/ Deborah A. Servitto
/s/ Jane M. Beckering